(8)

No. 86-1483

In The

Supreme Court of the United States

October Term, 1986

RICHARD REETZ,
Petitioner,

vs.

KINSMAN MARINE TRANSIT COMPANY,
Respondent.

BRIEF IN OPPOSITION
TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF MICHIGAN

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QUESTIONS PRESENTED FOR REVIEW

I.

SHOULD CERTIORARI BE GRANTED IN A CASE WHICH MEETS NONE OF THE CRITERIA OF 28 U.S.C.A. 1257(3) AND NONE OF THE CONSIDERATIONS OF RULE 17?

II.

WHERE THE PRACTICE FOR PREJUDGMENT INTEREST IN SEAMEN'S CASES IS SETTLED IN ALL FEDERAL COURTS AND ALL STATE COURTS OF LAST RESORT, SHOULD THIS COURT DISTURB IT?

III.

SHOULD PREJUDGMENT INTEREST BE AWARDED ON FUTURE DAMAGES NOT REDUCED TO PRESENT VALUE?

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ARGUMENT

I.

THE SUPREME COURT LACKS JURISDICTION.

Petitioner cites two articles of the Constitution, three federal statutes and one state statute, in support of his jurisdictional claim, but the "validity" of none of these is "drawn in question" by anyone. Hence, there is no jurisdiction under 28 U.S.C. 1257(3).

There is no conflict between decisions of federal courts or state courts of the last resort nor is there an important question of federal law raised. This case is important only to the parties. Hence, none of the considerations of Rule 17 are met.

II.

THE PRACTICE FOR PREJUDGMENT INTEREST IN SEAMEN'S CASES IS SETTLED IN ALL FEDERAL COURTS AND ALL STATE COURTS OF LAST RESORT.

The practice for prejudgment interest in seamen's cases is settled. Prejudgment interest may not be awarded in a Jones Act suit at law. Where a general maritime claim is tried to a jury, the grant or denial of prejudgment interest must be submitted to the jury. *Petersen* v. *Chesapeake & Ohio Ry. Co.*, 784 F.2d 732, 740 (6th Cir. 1986). Prejudgment interest in seamen's cases tried to the court is subject to the usual admiralty rule of discretion. *Doucet* v. *Wheless Drilling Co.*, 467 F.2d 336, 340 (5th Cir. 1972).

Petitioner claims the practice is unsettled and cites six cases on pages 15 and 16 of his Petition. The first of these, *Rivera* v. *Rederi A/B Nordstjernan*, 456 F.2d 970 (1st Cir. 1972), allowed prejudgment interest because of the obstinacy of the defendant, a result not incongruous with the settled practice. The second, *Petition of Oskar Tiedeman & Co.*, 236 F Supp 895 (D. Del. 1964), was an admiralty case tried to a commissioner, not a jury. The court's discussion at 901 supports the settled practice. The third, *Benoit* v. *Fireman's Fund Ins. Co.*, 361 So.2d 1332 (La. App. 1978), is not a decision of a state court of last resort as mentioned in Rule 17. More importantly, *Benoit* has been impliedly overruled by *Morris* v. *Schlumberger*, 436 So.2d 1178, 1183 (La. App. 1983). The fourth, *M&O Marine, Inc.* v. *Marquette Co.*, 730 F.2d 133, 136 (3rd Cir. 1984), was an indemnity trial for fixed damages sought by an employer, not a seaman's case. The fifth, *Columbia Brick Works, Inc.* v. *Royal Ins. Co.*, 768 F.2d 1066 (9th Cir. 1985), was a cargo case involving fixed damages, not a seaman's case. The sixth,

Frederick v. *Mobil Oil Corp.*, 765 F.2d 442 (5th Cir. 1985), was an action brought under the Outer Continental Shelf Lands Act, which expressly incorporates state law [43 U.S.C. 1333(a)(2)(A)] and applies "federal law, supplemented by state law of the adjacent State . . . to these artificial islands as though they were federal enclaves in an upland State". *Rodrigue* v. *Aetna Casualty Co.*, 395 U.S. 352, 355, 89 S.Ct. 1835, 1837 (1969). Thus, there is no conflict in the settled practice.

Since neither petitioner nor respondent can cite any decision of a federal court or a state court of last resort in conflict with the settled practice, the considerations of Rule 17 are not met.

III.

PREJUDGMENT INTEREST SHOULD NOT BE AWARDED ON FUTURE DAMAGES NOT REDUCED TO PRESENT VALUE.

Petitioner claimed permanent injury. Petitioner's lost wages to date of trial were around $100,000.00. His pain and suffering to date of trial was an additional, unspecified amount. But the net verdict well exceeded $900,000.00. Thus, the great bulk of petitioner's award was for future, not yet incurred loss and suffering. Yet, petitioner seeks 12 percent compound interest on the total award. This Court's special solicitude for seamen, however apt in modern times, has never countenanced greed of this magnitude.

The settled practice is that the trier of fact, be it judge or jury, makes the entire award, with or without prejudgment interest as discretion dictates. Petitioner now seeks to scramble the settled practice by mechanical application of a local statute in post trial proceedings under the guise of judicial discretion. The Michigan

Court of Appeals would have no part of this. The Michigan Supreme Court denied leave because not worthy of review. This Court should do the same.

The purpose of prejudgment interest is compensation for present losses, not punishment of defendants or windfalls for claimants. It is an abuse of discretion to award prejudgment interest on future damages. *Valley Line Co.* v. *Ryan*, 771 F.2d 366, 377 (8th Cir. 1985); *Martin* v. *Walk, Haydel & Associates*, 794 F.2d 209, 212 (5th Cir. 1986).

CONCLUSION

Michigan courts have consistently interpreted Michigan's prejudgment interest statute in conformity with prevailing federal case law in order to insure the uniform application of the Jones Act to all seamen irrespective of the forum in which the litigation is instituted. The interpretation of the Michigan statute is peculiarly within the purview of the Michigan courts and does not present a question for review by this Court. Respondent would therefore request this Court to deny the Petition for Writ of Certiorari to the Court of Appeals of the State of Michigan.

Respectfully submitted,

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